THE HON'BLE MR JUSTICE GODA RAGHURAM

WRIT PETITION No.10081 of 2006

Dated: 24.08.2006

Between:

G.Rajendranath Goud s/o late Sri Jagannath Goud,
Member, founder's family Sri Venkateswara swamy temple,
Chikkadapali, Hyderabad,
R/o 1-8-497/3, Chikkadpalli, Hyderabad.

..... PETITIONER

AND

The Commissioner of Endowments,
Tilak Road, Hyderabad and others.

.....RESPONDENTS

THE HON'BLE MR JUSTICE GODA RAGHURAM

WRIT PETITION No.10081 of 2006

ORAL ORDER:

The writ petition is misconceived. The petitioner seeks a writ or direction in the nature of Prohibition against the second respondent for entertaining O.A.No.14 of 2006 preferred by the third respondent under Section 87(1)(h) of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short "the Act"), seeking recognition as a member of the founder's family of
Sri Venkateswaraswamy Devasthanam, Chikkadpalli, Hyderabad.

The petitioner claims to have been recognized as a member of

the founder's family. This claim is contested by the third respondent. Be that as it may. The third respondent, on 22.08.2003 and 30.06.2005, made representations before the first respondent seeking recognition as a member of the founder's family in respect of the Devasthanam, under Section 17 of the Act. As the said representations were not disposed of, he filed W.P.No.17047 of 2005. The writ petition was disposed of by the judgment of this Court, dated 03.08.2005, directing the first respondent herein (sole respondent in the said writ petition) to consider and dispose of the third respondent's representations dated 22.08.2005 and 30.06.2005, within three weeks from the date of receipt of the copy of the judgment in W.P.No.17047 of 2005, duly recording reasons for the decision and to communicate the decision arrived at to the third respondent within the time stipulated by this Court.

Consequent on the direction of this Court above, the first respondent issued a notice, dated 30.08.2005 to the petitioner and others, on the third respondent's claim. The petitioner challenged the notice issued by the first respondent in W.P.No.20836 of 2005, *inter alia*, on the ground that it was the Government alone, which was competent to adjudicate upon a claim (for being a member of the founder's family) and the first respondent had no such power. W.P.No.20836 of 2005 was disposed of by this Court on 03.01.2006 declaring that the first respondent had no competence to conduct an enquiry under Section 87(1)(h) of the Act; that the jurisdiction to adjudicate upon such claims inhered in the second respondent herein-the Deputy Commissioner; and directing the Commissioner to send back the entire material (including the representations made by the third respondent herein seeking recognition), to the concerned Deputy Commissioner so as to enable the competent authority to conclude the enquiry. This Court directed that the enquiry be completed by the Deputy Commissioner concerned within a

period of six weeks from the date of receipt of a copy of the judgment in W.P.No.20836 of 2005.

On receipt of the material from the first respondent, as directed in the judgment in W.P.No.20836 of 2005, the second respondent considered the same and concluded that the claim of the third respondent as well as other competing claims (of the brothers of the third respondent) were not in the format prescribed by the relevant Rules i.e., the Enquiries and Appeals Rules, 1987 (for short "the Rules") issued in G.O.Ms.No.651, Revenue (Endowments-I) Department, dated 30.06.1989. Consequently, by the order impugned in this writ petition, dated 22.03.2006, the second respondent directed the third respondent and the other two claimants to file their respective applications under Section 87(1)(h) of the Act and in accordance with the Rules, duly impleading the appropriate persons as respondents, within a week from the date of receipt of the second respondent's memo, so as to facilitate the conduct of enquiry by the second respondent within the time frame stipulated by this Court in W.P.No.20836 of 2005.

Sri Govind, learned counsel appearing for the writ petitioner contends that the second respondent has no jurisdiction to adjudicate upon the claim made by the third respondent seeking recognition as a member of the founder's family. This contention is projected on two fronts; (a) that as this Court had directed the second respondent to dispose of the third respondent's claims, if the claim of the third respondent was defective either in procedure or substance, the second respondent had to reject the claim and could not have directed the third respondent to file a claim in accordance with the Rules; and (b) that in view of the provisions of Section 17 of the Act, it is only the Government that is competent to adjudicate upon a claim of being a member of the founder's family of a Hindu Religious Institution.

In the considered view of this Court, both these contentions must fail. Insofar as the second contention is concerned, Section 17 of the Act sets out the procedure for appointment of trustees and spells out their term of office. The proviso to Section 17(1) of the Act enacts that the founder or one of the members of the founder's family, if qualified, as prescribed, shall be appointed as one of the trustees. That is the scheme and tenor of the Act. On a true and fair construction of the provisions of the Act there is a distinction between being a member of the founder's family and appointment as a trustee. If a person is a member of the founder's family and is qualified as prescribed under the Act, such person must be appointed as one of the trustees. A person by virtue of having been recognized as member of the founder's family *per se* does not become a trustee, unless he is appointed as such in accordance with the substantive and procedural rigour of Section 17 of the Act.

Section 87(1)(h) of the Act confers on the Deputy Commissioner having jurisdiction, the power and authority to decide any dispute as to the question whether a person is a founder or a member from the family of the founder of an institution or endowment, governed by the provisions of the Act. Where there are a plurality of competing claims, they assume the character of a *lis.* The Deputy Commissioner, having jurisdiction, is the authority qua Section 87(1)(h) of the Act to determine such *lis*. This is what has been spelt out in the judgment of this Court in W.P.No.20836 of 2005. The competing claims (present in this case, between brothers) ought to be adjudicated by the Deputy Commissioner under Section 87(1)(h) of the Act. There is no escape from this conclusion and the petitioner's contentions to the contra are misconceived and are accordingly rejected.

The first contention of the petitioner is equally misconceived. The

second respondent, under the scheme of the Act, and in particular, Section 87(1)(h) thereof, is a quasi-judicial determinator of competing claims (of being a member of the founder's family). The formalism and procedural rigour of the provisions of the Code of Civil Procedure, 1908 is inapplicable to decisions by Tribunals, such as the second respondent. The petitioner is quibbling on technicalities in contending that the second respondent ought to have rejected the claim of the third respondent if it was procedurally imperfect and ought not to have directed him to file a claim in accordance with the procedure ordained under the Rules. At any rate, the petitioner suffers no prejudice by the memo issued by the second respondent.

As the first second has statutory jurisdiction to determine the competing claims for membership of a founder's family of a Hindu Religious Institution, no writ in the nature of Prohibition can issue to interdict exercise of such jurisdiction.

The writ petition must, therefore, fail, and is accordingly dismissed. There shall be no order as to costs.

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23.08.2006

Note: Furnish C.C., as soon as possible.

(B/o)

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